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The Forty Years Fight to Desegregate Public Education in the Fifth Circuit and in Particular, Mississippi

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THE FORTY YEAR FIGHT TO DESEGREGATE PUBLIC EDUCATION IN THE FIFTH CIRCUIT AND IN PARTICULAR, MISSISSIPPI

*Judge Billy G. Bridges**
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We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

Thomas Jefferson, The Declaration of Independence.

I. INTRODUCTION

The spark to end desegregation in Mississippi public schools started more than forty years ago with a decision that has been unparalleled in this millennia—*Brown v. Board of Education.*[1] Before *Brown*, Mississippi and the nation as a whole reveled in the confirmation of Japan's 1945 World War II surrender. The nation's focus was on the horrors of communism, not racial inequality.[2] Segregation ingrained itself in southern culture, and the inequitable rules were seldom questioned.[3] Blacks were not "welcome" in white churches, white doctors' offices, public swimming pools, movie theaters (except in small balcony areas) nor many other public areas, especially white schools.[4] It was illegal for blacks and whites to intermarry.[5] Black teachers with qualifications equal to white teachers received much lower salaries than their white counterparts. Blacks and whites were even segregated as troops in the armed services. Virtually no facet of life existed without segregation. In fact, segregation was even practiced by criminals, such as with New Orleans' prostitution businesses.[6]

Plessy v. Ferguson[7] was the prevailing authority for white supremacy. This was a case decided by the United States Supreme Court in 1896 which affirmed a Louisiana decision to keep passenger trains segregated by carriages and which

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1. 347 U.S. 483 (1954); see Michael J. Klarman, *Brown, Racial Change, and the Civil Rights Movement,* 80 VA. L. REV. 7, 8 (1994) (citing J. HARVIE WILKINSON III, From BROWN TO BAKKE: THE SUPREME COURT AND SCHOOL INTEGRATION: 1954-1978 6 (1979). "Brown may be the most important political, social, and legal event in America's twentieth-century history." *Id.*

2. JOHN EGERTON, SPEAK NOW AGAINST THE DAY: THE GENERATION BEFORE THE CIVIL RIGHTS MOVEMENT IN THE SOUTH 337 (1994).

3. *Id.* at 336.

4. *Id.* at 337.

5. Plessy v. Ferguson, 163 U.S. 537 (1896).

6. KENNETH C. DAVIS, DON'T KNOW MUCH ABOUT HISTORY: EVERYTHING YOU NEED TO KNOW ABOUT AMERICAN HISTORY BUT NEVER LEARNED 216 (1990).

7. 163 U.S. 537 (1896).

was filed by a Louisiana citizen who "was seven-eighths Caucasian and one eighth African blood."[8] The plaintiff argued that separate carriages violated the Thirteenth Amendment, which abolished slavery, and the Fourteenth Amendment.[9] The Court held that the Louisiana statute "too clear[ly]" for argument did "not conflict with the Thirteenth Amendment."[10] Indeed the Court went on to say that "[s]lavery implies involuntary servitude—a state of bondage" as opposed to the separation of races.[11] It reiterated that "to make [the Thirteenth Amendment] apply to every act of discrimination" would be "running the slavery argument into the ground."[12] Even more appalling was the statement:

> A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or reestablish a state of involuntary servitude.[13]

Although the *Plessy* decision had nothing to do with public education, it remained the key case law which kept blacks and whites separated from public intercourse.[14] In the states falling under the Court of Appeals for the Fifth Circuit, this was especially true. Plagued by low incomes, southern society "clung to the slavery-inspired notion that the many should sweat for the comfort of the few. And, in so believing, they perpetuated a distorted Southern concept of work—its methods and traditions, its outcomes and rewards, its status, its very nature."[15] Further, in the South, where segregation laws failed "to keep blacks in their place, another technique proved even more effective: the terror of lynching."[16]

During the *Plessy* era the concept of public education supported by tax dollars had not yet "taken hold."[17] The public schools which existed were a far cry from the education systems of today. Most students were not graded on their work,[18] the school term generally ran only three months of the year,[19] and compulsory attendance was extremely rare.[20] White children were educated largely either by private schools or at home.[21] Black Americans were generally uneducated and in

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8. *Id.* at 541.
9. *Id.* at 542.
10. *Id.*
11. *Id.*
12. *Id.* at 543.
13. *Id.*
14. MORRIS L. ERNST, THE GREAT REVERSALS: TALES OF THE SUPREME COURT 157 (1973). It is interesting that Plessy was used to test a statute that was passed in a legislature which contained enough African Americans members to block its passage. Some scholars have suggested that the black legislators were "bought." *Id.* It is also interesting that Homer Plessy was approached by black leaders specifically because of his light color to test the statute. *Id.* at 158. In fact, arrangements had been made in advance to arrest him for testing the statute because it was very hard to ascertain that he was part African American. *Id.*
15. EGERTON, *supra* note 2, at 347.
16. DAVIS, *supra* note 6, at 216.
17. LYNNE IANNIELLO, MILESTONES ALONG THE MARCH 52 (1965).
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*

most instances, illiterate. In many Southern states, education of "Negroes" was prohibited by law.[22] Thus, the issue of "separate but equal" public education was not before the Court for almost one half of a century after the *Plessy* decision.

The role of the Fifth Circuit has been crucial in the enforcement of desegregation and in prescribing how desegregation was to be accomplished. Since the circuit encompassed the states that were on the forefront of the segregation war, its decisions were cited as extraordinary leaps in the judicial supervision of integration.[23] In this Article, the aspiration is to remind all of the terrible suffering inflicted on our fellow Americans, to highlight important battles in the long and continuous struggle to obtain civil rights, to shed some light on how the Fifth Circuit helped to shape our current integration policies, and finally, to show that the struggle must continue if America is truly to reach social equality.

II. PUBLIC EDUCATION AT ISSUE BEFORE THE UNITED STATES SUPREME COURT

The first two public education cases brought before the United States Supreme Court after *Plessy*, *Cumming v. Board of Education*,[24] and *Gong Lum v. Rice*,[25] did not challenge the validity of the "separate but equal" doctrine. In fact, those cases upheld decisions by the Georgia and Mississippi Supreme Courts ruling that "separate but equal" was not discriminatory, and that the doctrine did not deny the plaintiffs equal protection.[26]

Not long after the *Gong Lum* case, the issue of educational separatism was brought before the Court.[27] The barriers to true equal education began to bend and break in every direction. The first triumph came in 1938—*Missouri ex rel. Gaines v. Canada*.[28] The Court recognized for the first time that denying a black student access to higher education while providing that opportunity for white students was in fact a denial of equal protection.[29] In 1948, the Court reiterated this conclusion and compelled the state of Oklahoma to admit a black student to a state supported law school for white students.[30] In 1950, the Court again affirmed its earlier decisions in two separate cases and required two black students to be admitted to state supported colleges for white students.[31] The first case, *Sweatt v. Painter*,[32] required a state supported law school for white students

22. *Id.*

23. Jack Greenberg, *Forward: A Civil Rights Symposium Honoring Judge John Minor Wisdom*, 64 TUL. L. REV. 1351, 1353 (1990).

24. 175 U.S. 528 (1899) (Georgia Supreme Court case affirmed by United States Supreme Court holding that unequal appropriation of taxes for white schools and black schools is not discriminatory).

25. 275 U.S. 78 (1927). (Mississippi Supreme Court held that a Chinese student could not attend a public school for white children solely on the ground that she was of Chinese descent or "yellow race," and not a member of the white or Caucasian race. The case was upheld by the United States Supreme Court).

26. *Cumming*, 175 U.S. at 543; *Gong Lum*, 275 U.S. at 87.

27. Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938).

28. *Id.*

29. *Id.* at 345 (Providing a state law school for white students while providing no equal opportunity for black students was a denial of equal protection).

30. Sipuel v. Board of Regents of the Univ. of Oklahoma, 332 U.S. 631, 633 (1948).

31. Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Oklahoma State Regents for Higher Educ., 339 U.S. 637 (1950).

32. 339 U.S. 629 (1950).

to admit a black student.[33] The second case, *McLaurin v. Oklahoma State Regents for Higher Education*,[34] required admission of a black student into a doctoral degree program in education.[35]

The United States Court of Appeals for the Fifth Circuit recognized these new holdings and expanded upon them in 1953.[36] That court held "manifest inequalities in the treatment of Negro students may not be condoned for under the clear mandate of the Fourteenth Amendment substantial equality is required."[37] The case required a state supported junior college in Texas to admit qualified black students in the area who would otherwise be required to travel approximately 400 miles.[38] Although great strides were made abolishing the "separate but equal" doctrine, the Supreme Court refused to examine the doctrine again, deciding each case strictly on denial of equal protection.[39] Indeed, the *Sweatt* case expressly reserved decision on the question whether *Plessy v. Ferguson* "should be held inapplicable to public education."[40] The Fifth Circuit followed this lead.

Thus, the efforts of the civil rights movement were devoted to overturning the *Plessy* decision. Editor Ralph Emerson McGill of the ATLANTA CONSTITUTION described the decade before *Brown* as a "sprinkling of white progressives and black antisegregationists [who] tried to point the South to the future."[41] He claimed that the "combination of favorable circumstances had opened a narrow window of opportunity through which the South might have reached both internal social reform and external parity with the rest of the nation. At times it appeared that the underdog advocates of reform were gaining ground."[42] Unfortunately, instead of "voluntary acts of enlightened self-interest," social reform in the South was paved by courageous black plaintiffs, lawsuits, conservative white judges, court decisions, protest demonstrations, needless casualties and long years of laborious struggle.[43]

A. The Beginning of the Civil Rights Movement

In order to understand how and why Mississippi has reached its plateau in public education today, it is necessary to first examine the events leading up to the *Brown* decision and the status of the American mentality at that time. Thus, this subsection will begin by briefly reviewing the events and decisions by the United States Supreme Court before *Brown*. In an attempt to keep this Article under the auspices of the Fifth Circuit, the Article will point out pertinent cases decided by that court at the appropriate periods.

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33. *Id.* at 636.
34. 339 U.S. 637 (1950).
35. *Id.* at 642.
36. Wichita Falls Junior College Dist. v. Battle, 204 F.2d 632 (5th Cir. 1953), *cert. denied*, 347 U.S. 974 (1954).
37. *Id.* at 635.
38. *Id.*
39. IANNIELLO, *supra* note 17, at 53.
40. IANNIELLO, *supra* note 17, at 53; Sweatt v. Painter, 339 U.S. 629, 633 (1950).
41. EGERTON, *supra* note 2, at 339.
42. EGERTON, *supra* note 2, at 340.
43. EGERTON, *supra* note 2, at 340.

After the Civil War, many southern states adopted "black codes" to help maintain control over the newly freed black population. Black Americans turned to the federal government during the Reconstruction period and won back many of the rights denied to them under the black codes. In 1875, Congress passed a Federal Civil Rights Act which granted "'full and equal enjoyment of the accommodations' of public conveyances."[44] However, states falling under the control of the Fifth Circuit generally ignored the federal guarantees. Mississippi and Texas completely ignored the laws.[45] Finding the Act too difficult to enforce, the United States Supreme Court overturned the first section of the new Civil Rights Act and limited the Act to prohibit racial discrimination by the states, not by private individuals.[46] Thus, the rights black Americans had won virtually disappeared overnight.

In 1887, Florida adopted a statute requiring a "color line" on first class railway travel.[47] Mississippi and Texas followed Florida's lead, requiring blacks to be completely segregated by coaches on all railway travel.[48] In 1890, Mississippi successfully defended its segregation code in a case before the United States Supreme Court.[49] The Mississippi case led the way for other states to adopt their own "Jim Crow" laws. In 1896, the Supreme Court handed down the infamous *Plessy* decision, giving its stamp of approval to "separate but equal."[50] For many years to come, this would remain the status of the South.

The beginning of the segregation breakdown in the United States started in 1945, heralded by the succession of Vice President Harry Truman to the Presidency. Twenty months after Truman took office, he established the President's Committee on Civil Rights.[51] The purpose of the Committee was to recommend more effective means for the protection of civil rights.[52] In 1947, Truman's Committee on Civil Rights published its report: *To Secure These Rights*.[53] The report "stressed the need for federal legislation to strengthen inadequate civil rights statutes dating back to 1866, and offered twenty-seven recommendations for such legislation."[54] These recommendations included passage of federal laws banning segregation on interstate carriers under the commerce clause.[55] Recommendations also proposed legislation banning poll taxes and enacting a fair employment act, a fair education act, and laws restricting covenants in residential neighborhoods.[56]

In 1948, Truman issued an executive order abolishing segregation in the armed forces and instituting fair employment practices within the federal government's

44. CATHERINE A. BARNES, JOURNEY FROM JIM CROW 3 (1983).
45. *Id.* at 4.
46. *Id.* at 6. *See* The Civil Rights Cases, 109 U.S. 3 (1883).
47. *Id.* at 7.
48. *Id.*
49. Louisville, N. O. & Tex. Ry. v. Mississippi, 133 U.S. 587 (1890).
50. 163 U.S. 537 (1896).
51. IANNIELLO, *supra* note 17, at 7; Exec. Order No. 9,808, 11 Fed. Reg. 14,154 (1946).
52. IANNIELLO, *supra* note 17, at 7.
53. IANNIELLO, *supra* note 17, at 7; Committee on Civil Rights, *To Secure These Rights* (1947).
54. IANNIELLO, *supra* note 17, at 7-8.
55. IANNIELLO, *supra* note 17, at 8.
56. IANNIELLO, *supra* note 17, at 13-15.

civilian agencies.[57] Truman later called for full protection of the right to vote and the abolition of poll taxes in the seven states still requiring them.[58]

Truman's executive order infuriated southern political leaders. Many Southerners vowed to "fight fire with fire." Not only did Southerners refuse to support Truman in his 1948 election, they rallied and spoke against civil rights for African Americans and against Truman himself. This opposition caused the implementation of Truman's executive order to take seven years to complete.

Further opposition almost lost Truman the 1948 Democratic nomination. Kentucky Senator Alben Barkley, in perhaps the most influential speech at the 1948 Democratic National Convention led the way to Truman's nomination for Presidency stating:

> [Thomas Jefferson] . . . did not proclaim that all white, or black, or red, or yellow men are equal; that all Christian or Jewish men are equal; that all Protestant and Catholic men are equal; that all rich or poor men are equal; that all good or bad men are equal.
>
> What he declared was that all men are equal, and the equality which he proclaimed was equality in the right to enjoy the blessings of free government in which they may participate and to which they have given their consent.[59]

The speech had a profound effect on Truman's constituents. Thus, Truman became the first President elected without the support of the segregationist elements in the South.[60]

Even so, many Southerners in Congress took Truman's actions as a "declaration of war."[61] Mississippi Senator James Eastland accused Truman of turning over the government to "mongrelized minorities" trying to "Harlemize" America.[62] Governors Strom Thurmond of South Carolina, Fielding Wright of Mississippi, and Benjamin Laney of Arkansas mimicked Eastland's charges.[63] John Rankin, a Mississippi Representative, accused Truman of attempting to "ram" Communism "down the throats of the people of the United States." (Interestingly enough, Rankin had earlier proposed that black Americans be deported to Arizona or New Mexico and not allowed to leave without a passport).[64]

Many southern legislators rallied for secession from the United States. In May, about 1500 delegates from a dozen states met in a formal convocation in Jackson, Mississippi, led by Governor Thurmond.[65] Thurmond addressed the crowd explaining "all the laws of Washington and all the bayonets of the army

57. IANNIELLO, *supra* note 17, at 35.
58. EGERTON, *supra* note 2, at 476.
59. IANNIELLO, *supra* note 17, at 31-32 (Quoting Kentucky Senator Alben Barkley, Address at the Democratic National Convention (July 14, 1948)).
60. JAMES C. HARVEY, CIVIL RIGHTS DURING THE KENNEDY ADMINISTRATION 2 (1971).
61. EGERTON, *supra* note 2, at 476.
62. EGERTON, *supra* note 2, at 476.
63. EGERTON, *supra* note 2, at 476-77.
64. EGERTON, *supra* note 2, at 477.
65. EGERTON, *supra* note 2, at 477.

cannot force the Negro into our homes, our schools, our churches, and our places of recreation."[66] Mississippi, South Carolina, Alabama, and Louisiana took Thurmond's speech to heart.[67] Governor Wright promptly addressed Mississippians in a statewide radio speech after the convention, stating that desegregation would never be tolerated in Mississippi, regardless of "what the federal government said or did."[68] Specifically addressing black Mississippians, the Governor added "[I]f any of you have become so deluded as to want to enter our white schools, patronize our hotels and cafes, enjoy social equality with the whites, then kindness and true sympathy requires me to advise you to make your home in some state other than Mississippi."[69]

Cognizant of the immense political wrangle on civil rights by American legislators, the United States Supreme Court continued to follow Truman's lead and uphold the civil rights of African Americans. In 1946 the Court upheld the rights of "Negroes" to travel unsegregated on interstate carriers.[70] However, bus and rail lines continued to operate on a segregated basis. Indeed, at least one bus line admitted in a later trial that it maintained a segregation policy after the Supreme Court ruling.[71]

B. The Supreme Court Continues to Break Barriers

Before Truman's election to a second term, the United States Supreme Court decided another landmark case, *Shelley v. Kraemer*,[72] handed down on May 3, 1948. In that case, the Court ruled that restrictive covenants providing that property would "not be sold, leased, or rented to" a certain race of people in residential neighborhoods were not enforceable and in fact denied those persons the equal protection of the laws guaranteed by the Fourteenth Amendment.[73] The Court reiterated that "[t]he Fourteenth Amendment declares 'that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color.'"[74] That same year, the United States Supreme Court ruled that denial of access to steamships to black passengers violated a Michigan Civil Rights Act.[75] Neither of these cases reached the *Plessy* holding, which established the "separate but equal" doctrine.

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66. EGERTON, *supra* note 2, at 477.
67. EGERTON, *supra* note 2, at 477-78.
68. EGERTON, *supra* note 2, at 484.
69. EGERTON, *supra* note 2, at 484.
70. *See* Morgan v. Virginia, 328 U.S. 373 (1946).
71. BARNES, *supra* note 44, at 88.
72. 334 U.S. 1 (1948) (Deciding two cases under consideration, one on certiorari from the Missouri Supreme Court and the other from the Michigan Supreme Court).
73. IANNIELLO, *supra* note 17, at 19.
74. *Shelley*, 334 U.S. at 21 (citing Strauder v. West Virginia, 100 U.S. 303, 307 (1880)).
75. *See* Bob-Lo Excursion Co. v. Michigan, 333 U.S. 28, 40 (1948).

The Fifth Circuit Court of Appeals, then comprised of Alabama, Florida, Georgia, Louisiana, Mississippi and Texas, quickly followed suit.[76] In 1949, the appeals court held that black teachers in Georgia receiving lower salaries than equally qualified white teachers were being treated in a manner contrary to equal protection and due process.[77] Two years later, it reiterated this decision to Mississippi in *Bates v. Batte*.[78]

In 1950, the United States Supreme Court publicly supported the desegregation of higher learning institutions when no equal programs were available to black students.[79] Two years later, the Court handed down the landmark case of *Brotherhood of Railroad Trainmen v. Howard*.[80] In that case, the Court agreed that the railroad's "attempted predatory appropriation" of black train porters' jobs was, in fact, illegal discrimination.[81] The Fifth Circuit again followed suit. In 1952, the appeals court held that a segregated state supported golf course for white persons denied equal protection to black persons since no equal facility existed for black persons.[82] The court stated:

> [I]f an individual negro citizen desires to play golf on a municipal course and is prevented from doing so only because he is a negro citizen, while an individual white citizen, because he is not a negro, is permitted to do so, the fact that he is being discriminated against in the assertion of a personal and individual right, because of his color, stands out like a sore thumb, or like a large blob on the end of a small nose.
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> . . . "It is the individual who is entitled to the equal protection of the laws, and if he is denied * * * a facility of convenience * * * which, under substantially the same circumstances, is furnished to another * * * he may properly complain that his constitutional privilege has been invaded."[83]

In 1953 the Supreme Court ruled that public eating places in the District of Columbia could not refuse service because of race or color, thereby upholding a seventy-five year-old statute that had never been enforced.[84] This decision, unfortunately, had no effect in other states without such statutes. It did, however, pave the way for similar (though much later) civil rights movements and legislation.

III. THE DESTRUCTION OF THE SEPARATE BUT EQUAL DICHOTOMY

During the 1950's the most important strides were made in the civil rights movement, especially in the education arena. Perhaps one of the most important

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76. Burke Marshall, 63 TUL. L. REV. 1241 (1989) (reviewing DEBORAH J. BARROW & THOMAS G. WALKER, A COURT DIVIDED: THE FIFTH CIRCUIT COURT OF APPEALS & THE POLITICS OF JUDICIAL REFORM (1988)).

77. *See* Cook v. Davis, 178 F.2d 595, 596-97 (5th Cir. 1949), *cert. denied*, 340 U.S. 811 (1950).

78. 187 F.2d 142, 144 (5th Cir. 1951), *cert. denied*, 342 U.S. 815 (1951).

79. *Id.* See Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).

80. 343 U.S. 768 (1952).

81. *Id.* at 772.

82. Beal v. Holcombe, 193 F.2d 384, 387-88, (5th Cir. 1951), *cert. denied*, 347 U.S. 974 (1954).

83. *Id.* at 387.

84. District of Columbia v. Thompson Co., 346 U.S. 100, 117-18 (1953).

facets in the destruction of *Plessy* was the appointment of Thurgood Marshall as chief counsel for the National Association for the Advancement of Colored People [hereinafter NAACP]. Marshall was determined to attack and conquer the entire "separate but equal" dichotomy.[85] Perhaps the only factor more important than Marshall's NAACP appointment in the destruction of "separate but equal," was the appointment of Earl Warren as the Chief Justice of the United States Supreme Court by President Eisenhower. Warren made it clear, before his appointment was confirmed by the Senate, that he would vote to overturn *Plessy* if the situation arose.[86] Warren represented many Americans, black and white, in his opinion that *Plessy* was morally wrong. Society as a whole was becoming aware of the disparity among the races. Warren's unanimous confirmation by the Senate unequivocally illustrates this public awareness.

A. A Brief Summary of the Cases Comprising Brown

The South Carolina case, *Briggs v. Elliott*,[87] commenced the struggle for integrated education and was the first case to be filed of the five decided in *Brown*.[88] The case was originally brought in federal court to require a local school board to purchase a bus for the black school.[89] It was dismissed on a technicality.[90] The NAACP later took the case and refiled in federal court.[91] Marshall had not yet decided to take on the entire "separate but equal" system at the filing of this case. However, Federal Judge Waties Waring suggested that Marshall refile the complaint with an explicit claim that the schools in South Carolina were unconstitutionally segregated. Marshall refiled accordingly one month later.[92] The State conceded that the schools were not equal, and the court ruled that they must be equalized promptly.[93]

The next case to be decided under the *Brown* heading was filed in 1951 in Richmond, Virginia—*Davis v. County School Board*.[94] This was the first case originated by students. After a student-staged walkout brought about national attention to the disparity between the schools, the NAACP took action.[95] The federal court hearing the case upheld segregation, but ordered that the school board begin to equalize the schools.[96] The next link in the *Brown* chain was the Delaware case of *Gebhart v. Belton*.[97] This was the first case in which a state court required that black students be admitted to white schools because of the inferior education provided for black students.[98] It was the State that appealed

85. IANNIELLO, *supra* note 17, at 49.
86. DAVIS, *supra* note 6, at 339.
87. 98 F. Supp. 529 (E.D.S.C. 1951), *vacated*, 342 U.S. 350 (1952).
88. *Id.*
89. EGERTON, *supra* note 2, at 590.
90. EGERTON, *supra* note 2, at 590.
91. EGERTON, *supra* note 2, at 590-91.
92. EGERTON, *supra* note 2, at 592.
93. Briggs v. Elliott, 342 U.S. 350, 351 (1952).
94. 103 F. Supp. 337 (E.D.Va. 1952), *rev'd*, 349 U.S. 294 (1955).
95. EGERTON, *supra* note 2, at 599.
96. EGERTON, *supra* note 2, at 600.
97. 91 A.2d 137 (Del. 1952), *cert. granted*, 344 U.S. 891 (1952).
98. *Id.*

the decision, contending that the state courts had erred in ordering the immediate admission of black students to the white schools.[99]

Bolling v. Sharpe[100] was the fourth case to be decided under *Brown*. It was a similar case brought in the District of Columbia. The court dismissed the case and brought it under *Brown* by writ of certiorari.

The final case to be joined under *Brown* was *Brown* itself. The case sought to enjoin segregation in state elementary schools. Although the district court found that segregation in public education had a significant detrimental effect to the black children, it held that the quality of the education was substantially equal and denied the requested relief.[101]

B. The Joining of the Cases

In June 1952, the United States Supreme Court announced that it would hear arguments in the *Briggs* and *Davis* cases.[102] In October, the other cases were scheduled to come before the Court.[103] The Court bracketed all five cases as a single entry under the *Brown* heading.[104] Six months after the hearing, the Court postponed its decision to allow more arguments.[105] It was at this time that the most important event in the overturning of *Plessy* occurred—Chief Justice Fred M. Vinson died leaving a vacant seat on the Court.[106] Earl Warren, then Governor of California and a man with no prior judicial experience, was appointed as the new Chief Justice. Also during this time, Dwight D. Eisenhower assumed the Presidency. Eisenhower continued to support the progress for racial equality started by Truman, although in a much quieter manner.[107] On May 17, 1954, Chief Justice Warren delivered the unanimous opinion of the Court that school segregation was unconstitutional.[108]

IV. THE EFFECT OF *Brown*: "SEPARATE BUT EQUAL" HAS NO PLACE

After the *Brown* decision, it became apparent that not only schools would be affected by the new ruling. The Interstate Commerce Commission quickly ruled that segregation practiced on railways was unconstitutional and ordered that the practice be stopped.[109] It also became apparent that this decision to end the practice of segregation would affect every train, bus, railroad station, and ticket office. Although many states abided by the new decisions, states under the Fifth Circuit, and Mississippi in particular, vowed to continue their segregation poli-

99. *See* Brown v. Board of Educ., 347 U.S. 483, 486-88 (1954).
100. 347 U.S. 497, 500 (1954).
101. *Brown*, 347 U.S. at 486.
102. EGERTON, *supra* note 2, at 601.
103. EGERTON, *supra* note 2, at 601.
104. EGERTON, *supra* note 2, at 601.
105. EGERTON, *supra* note 2, at 601.
106. EGERTON, *supra* note 2, at 601; ELDER WITT, CONGRESSIONAL QUARTERLY, THE SUPREME COURT: JUSTICE AND THE LAW 162 (1977).
107. HARVEY, *supra* note 60, at 4.
108. EGERTON, *supra* note 2, at 607.
109. BARNES, *supra* note 44, at 100.

cies for intrastate passengers.[110] Even so, up until the late 1960s, the Supreme Court continued to expand the holding to include public recreational facilities,[111] interstate and intrastate commerce,[112] public building facilities,[113] airports,[114] courtrooms,[115]bus terminals,[116] and public libraries.[117] The Court continued to find unconstitutional practices such as listing the race of a candidate on a ballot for office,[118] addressing black witnesses in court cases by their first names only (a well established Southern practice),[119] and even prohibiting interracial sexual and marriage relationships.[120]

In reaction, new tactics were employed by citizens to circumvent desegregation. Southern transit companies would leave the segregation signs up in the terminal, rest rooms, etc., but the policy would not be enforced. This way, the companies avoided desegregating interstate passengers and violating the laws since most black passengers did not know that the signs could be disregarded.[121] This practice led to the Montgomery Bus Boycott of 1955. Additionally, "Citizens' Councils" were formed throughout the South to fight integration.[122]

Approximately one year after the *Brown* decision, the United States Supreme Court handed down its decision in the case commonly referred to as *Brown II*.[123] The case required that schools start to integrate in "good faith" and with "all deliberate speed."[124] Many scholars have critically translated this to mean "movement toward compliance on terms that the white South could accept."[125] They further argue that the Court "undoubtedly failed to realize the depth or nature of the problem."[126] The Court refused to review cases raising issues on student placement regulations for eight years after *Brown II*,[127] leaving enforcement of desegregation to the federal judges, mainly those of the Fifth Circuit.[128]

A. The Fifth Circuit is Forced to Implement Brown

The "good faith" effort to desegregate the South with "deliberate speed" did not come about by the citizens. The Fifth Circuit was left with the chore of implementing *Brown*, and it proved to be an overwhelming task. It was not long after the *Brown* decision that the court undertook this responsibility. The court

110. BARNES, *supra* note 44, at 101.
111. *See* Holmes v. City of Atlanta, 350 U.S. 879 (1955); Watson v. Memphis, 373 U.S. 526 (1963).
112. *See* Gayle v. Browder, 352 U.S. 903 (1956); Boynton v. Virginia, 364 U.S. 454 (1960).
113. Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961).
115. Johnson v. Virginia, 373 U.S. 61 (1963).
116. Thomas v. Mississippi, 380 U.S. 524 (1965).
117. Brown v. Louisiana, 383 U.S. 131 (1966).
118. Anderson v. Martin, 375 U.S. 399 (1964).
119. Hamilton v. Alabama, 376 U.S. 650 (1964).
120. *See* McLaughlin v. Florida, 379 U.S. 184 (1964); Loving v. Virginia, 388 U.S. 1 (1967).
121. BARNES, *supra* note 44, at 105.
122. C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW 152 (1974).
122. Brown v. Board of Educ., 349 U.S. 294 (1955) (Commonly referred to as "Brown II").
124. *Id.* at 300-01.
125. RICHARD H. SAYLER ET AL. EDS., THE WARREN COURT: A CRITICAL ANALYSIS 52 (1969).
126. *Id.* at 53.
127. 349 U.S. 294 (1955).
128. *See e.g.*, Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959), *cert. denied*, 361 U.S. 840 (1959); Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957); Shuttlesworth v. Birmingham Bd. of Educ., 162 F. Supp. 372 (N.D. Ala. 1958), *aff'd* 358 U.S. 101 (1958).

had already recognized that refusal to permit a black person to use public parks and recreational facilities was unconstitutional discrimination.[129] On December 30, 1955, the court upheld the *Brown* decision and ordered the Dean of the University of Alabama to admit qualified black students to the University.[130] By January 1956, nineteen cases had been rendered upholding the *Brown* decision.[131] By the summer of 1955 the NAACP had filed more than 170 desegregation petitions with school boards in seventeen states.[132] In an effort to stop petitions for desegregation from being filed, many black persons signing the petitions were fired from their jobs, refused credit, threatened and harassed. On February 6, 1956, the University of Alabama was the site of the first violent riot in connection with the admission of a black student to a formerly all white school.[133] The student was later expelled for her own safety, ordered readmitted, and expelled again for making "outrageous" charges against University trustees.[134] The federal government took no action to reinstate the student again. For seven years after the riot the University continued to be segregated.[135] This riot was the first of many to come, since it illustrated to white Southerners that violence could in fact keep their schools from being integrated.

In the first three months of 1956, Mississippi, Alabama, Georgia, South Carolina and Virginia passed at least forty-two statutes to defeat integration.[136] By July, Louisiana had passed similar measures.[137] Legislatures in Mississippi, Alabama, and Georgia went so far as to declare *Brown* unconstitutional, null and void.[138] The Louisiana, Georgia, and North Carolina legislatures voted to withhold all funds from schools attempting to integrate.[139] Mississippi and Louisiana amended their constitutions to make it unlawful for students to attend integrated schools.[140] Southerners were simply not going to let their schools desegregate without a fight.

In remonstration to the legislative actions in the district of the Fifth Circuit, the court continued to find discrimination in cases throughout the South. The segregation of municipal beaches and swimming pools was declared unconstitutional in *City of St. Petersburg v. Alsup*.[141] Public housing projects that were segregated were declared unconstitutional in *Heyward v. Public Housing Administration*.[142] The court even extended the *Brown* holding to apply to state leased premises which excluded blacks, even if there was no purpose of discrimination on the

129. Holmes v. City of Atlanta, 223 F.2d 93 (5th Cir. 1955), *vacated*, 350 U.S. 879 (1955).
130. Adams v. Lucy, 228 F.2d 619 (5th Cir. 1955), *cert. denied* 351 U.S. 931 (1956).
131. WOODWARD, *supra* note 132, at 153.
132. WOODWARD, *supra* note 132, at 154.
133. WOODWARD, *supra* note 122, at 155.
134. WOODWARD, *supra* note 122, at 163.
135. WOODWARD, *supra* note 122, at 163.
136. WOODWARD, *supra* note 122, at 156.
137. WOODWARD, *supra* note 122, at 156.
138. WOODWARD, *supra* note 122, at 156-57.
139. WOODWARD, *supra* note 122, at 157.
140. WOODWARD, *supra* note 122, at 157-58.
141. 238 F.2d 830 (5th Cir. 1956), *cert. denied*, 353 U.S. 922 (1957).
142. 238 F.2d 689 (5th Cir. 1956).

part of the state in *Derrington v. M.W. Plummer.*[143] And in case after case, the court continued to rule in favor of black plaintiffs seeking to desegregate southern schools.[144]

In reaction to the Fifth Circuit's holdings, southern leaders created the "Southern Manifesto."[145] Basically, this document asserted that the courts, in direct opposition to the United States Constitution, were "creating chaos and confusion in the states principally affected."[146] The document went on to state that the rulings were destroying "amicable relations between the white and Negro races that have been created through ninety years of patient effort by the good people of both races."[147] In this writer's opinion, the document was a signed declaration of war against those who would attempt to enforce the *Brown* decision. Further, it was a warning that if more attempts were made to desegregate, riots such as the one at the University of Alabama would be forthcoming.

Under the direction of President Dwight Eisenhower, the Civil Rights Acts of 1957 and 1960 were passed.[148] Both of these Acts dealt primarily with voting rights.[149] However, the 1957 Act established the Civil Rights Division within the Justice Department and Burke Marshall took the helm.[150] Eisenhower's most important action was the dispatch of federal troops to Little Rock in September 1957.[151] The attempt of Arkansas Governor Orval Faubus to thwart a federal court decree to admit nine black students to Little Rock High School, and the riot which followed, posed a test to the orders.[152] The Arkansas National Guard was federalized and one thousand men were dispatched to quell active resistance to the enrollment.[153] Federal troops remained on the campus throughout the entire school year.[154]

The following year, the nine black students chosen to integrate Little Rock High School were requested to withdraw by the school board because of the violent public hostility. The district court agreed to withdraw the students.[155] In another landmark decision, the United States Supreme Court reversed the lower court and refused to postpone the Arkansas integration effort in September of 1958 in the case of *Cooper v. Aaron.*[156] Unfortunately, Faubus fought back by

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143. 240 F.2d 922 (5th Cir. 1956), *cert. denied*, 353 U.S. 924 (1957).
144. *See e.g.*, Board of Supervisors of La. State Univ. and Agric. and Mechanical College v. Tureaud, 226 F.2d 714 (5th Cir. 1955), *vacated*, 228 F.2d 895 (5th Cir. 1956); Whitmore v. Stilwell, 227 F.2d 187 (5th Cir. 1955); Adams v. Lucy, 228 F.2d 619 (5th Cir. 1955), *cert. denied*, 351 U.S. 931 (1956); Board of Supervisors of La. State Univ. and Agric. and Mechanical College v. Tureaud, 228 F.2d 895 (5th Cir. 1956); Brown v. Rippy, 233 F.2d 796 (5th Cir. 1956), *cert. denied*, 352 U.S. 878 (1956); Jackson v. Rawdon, 235 F.2d 93 (5th Cir. 1956), cert. denied, 352 U.S. 925 (1956).
145. DAVIS, *supra* note 6, at 344.
146. DAVIS, *supra* note 6, at 344.
147. DAVIS, *supra* note 6, at 344.
148. HARVEY, *supra* note 60, at 4.
149. HARVEY, *supra* note 60, at 4.
150. HARVEY, *supra* note 60, at 4.
151. HARVEY, *supra* note 60, at 5.
152. HARVEY, *supra* note 60, at 5.
153. HARVEY, *supra* note 60, at 5.
154. DAVIS, *supra* note 6, at 343.
155. Cooper v. Aaron, 358 U.S. 1, 4 (1958) (per curiam).
156. *Id.* at 5.

closing the Little Rock high schools.[157] The schools remained closed throughout the 1958-59 school year.[158]

Lower southern states such as Mississippi and Alabama made no efforts to comply with the *Brown* decision and "openly boasted of the fact" until the 1960s.[159] With the 60s came a new wave of sit-in demonstrations by black southern youths which brought national attention to the southern crisis. The sit-ins proved very effective and within a year, more than one hundred lunch counters opened their doors to serve black Americans.[160] The sit-ins also opened up pools, beaches, theaters, hotels, public parks, courtrooms, libraries and art galleries to the black public, even though, legally, black Americans were already entitled to use these public facilities.[161]

The sit-ins were followed by the Freedom Rides and the election of John F. Kennedy to the Presidency.[162] With this era came the true integration of the South. Little Rock reopened its schools on an integrated basis, followed by Georgia, Florida, Texas, Tennessee, Virginia and North Carolina. After another violent riot in New Orleans, the courts again ordered integration and the following school year New Orleans officials acquiesced, leading the way for desegregation in Louisiana.[163]

B. Mississippi and James Meredith: The Fifth Circuit Loses Patience

Not long after the New Orleans incident came the gripping saga of James Meredith's attempt to integrate the University of Mississippi. On January 26, 1961, Meredith, a twenty-eight-year-old Air Force veteran mailed his application for admission as a transfer student to the all white university and was promptly denied admission due to "overcrowding."[164] Meredith then requested that his application be considered on a continuing basis.[165] No response was given from the University.[166] Meredith wrote the Dean of the College of Liberal Arts and requested the Dean to review his case and assure him that he was not being denied admission on the basis of his race.[167] On May 9, 1961, Meredith received a reply letter from the registrar informing him that only forty-eight of his ninety credit hours were acceptable for transfer. Meredith replied a week later that he still wanted his application considered for admission.[168] On May 25, the registrar informed Meredith that none of his credits earned from Jackson State College, an

157. WOODWARD, *supra* note 122, at 167.
158. WOODWARD, *supra* note 122, at 167.
159. WOODWARD, *supra* note 122, at 168.
160. WOODWARD, *supra* note 122, at 171.
161. WOODWARD, *supra* note 122, at 171.
162. WOODWARD, *supra* note 122, at 171-172.
163. WOODWARD, *supra* note 122, at 172; *See* Bush v. Orleans Parish Sch. Bd., 138 F. Supp. 337 (E.D. La. 1956); *aff'd sub nom.* Orleans Parish Sch. Bd. v. Bush, 242 F.2d 156 (5th Cir. 1957).
164. Meredith v. Fair, 298 F.2d 696, 698 (5th Cir. 1962).
165. *Id.* at 698.
166. *Id.*
167. *Id.*
168. *Id.*

all black school, could be accepted by the University because the college was not a member of the Southern Association of Colleges and Secondary Schools.[169] The letter also informed Meredith that he could not be accepted because he could not produce the required letters of recommendation from University alumni.[170]

Meredith filed suit on May 31 in the Southern District of Mississippi seeking an injunction against his denial of admission.[171] The case was continued for various reasons until August.[172] (It is apparent to this writer that one of these reasons included a willful attempt to cause Meredith to miss the summer term). District Judge Sidney Mize finally ruled on the case in December and found that Meredith was not denied admission because of his race, but for other reasons.[173] In response, Fifth Circuit Judge John Minor Wisdom took "judicial notice" that segregation in Mississippi schools was a "plain fact known to everyone" and ordered Judge Mize to "conduct a full trial on the merits" on the denial of Meredith's admission and to give a ruling before the new spring term.[174] The court also found that requiring a black applicant to produce letters of recommendation from alumni was a denial of equal protection, especially in light of the fact that the University only adopted that requirement after the *Brown* decision.[175]

On remand, Mize found that Meredith had not met his burden of proof "by showing by a preponderance of the evidence" that he was denied admission because of his race.[176] Mize further found that Meredith had procured his letters of recommendation from the five black citizens by fraud.[177] (It was later alleged that four of Meredith's five letters of recommendation to the University had been "withdrawn" due to threats by white businessmen).[178] One week later, Judge Wisdom and Fifth Circuit Judge Richard T. Rives denied Meredith's motion to force his admission due to insufficient time to study the record. Fifth Circuit Judge Elbert Tuttle disagreed, stating that the record as submitted "calls for our granting the injunction."[179]

When the entire trial record reached the Fifth Circuit, the panel selected to review the case consisted of Wisdom, Judge John R. Brown, and Senior District Judge Dozier A. DeVane of Florida, who was designated to sit as a circuit judge.[180] On June 25, 1962, Judge Wisdom delivered the opinion of the court, finding that Meredith was denied admission solely on the basis of his race.[181] The court further found that the delays in bringing this case to a conclusion were

169. *Id.* at 699.
170. *Id.*
171. *Id.*; *see* Meredith v. Fair, 199 F. Supp. 754 (S.D. Miss. 1962); *aff'd.*, 298 F.2d 696 (5th Cir. 1962).
172. *Meredith*, 298 F.2d at 699.
173. *Id.* at 700.
174. *Id.* at 701-03.
175. *Id.* at 702.
176. Meredith v. Fair, 202 F. Supp. 224, 229 (S.D. Miss. 1962); *rev'd.*, 305 F.2d 343 (5th Cir. 1962), *cert. denied*, 371 U.S. 828 (1962).
177. Meredith, 202 F. Supp. at 228.
178. WOODWARD, *supra* note 122, at 177.
179. JACK BASS, UNLIKELY HEROES 177 (1981).
180. *Id.* at 178.
181. Meredith v. Fair, 305 F.2d 343 (5th Cir. 1962); *cert. denied*, 371 U.S. 828 (1962).

of "doubtful propriety" and were unreasonably "long delays by the trial judge."[182] The court further found that adoption of the requirement that applicants submit letters of recommendation by alumni was "affirmative action" by the University to "evade desegregation."[183] The court also found that Jackson State College was now a member of the Southern Association of Colleges and Meredith's admission could not be denied on that basis.[184] Interestingly, the court opined that the reason blacks were to be admitted to white colleges in the first place was because the black colleges were inferior to the white colleges. Now, the University of Mississippi was denying admission by a transfer student from a black college for the very same reason.

Fifth Circuit Judge Ben F. Cameron, in an "upset [to] legal precedent" then stayed the execution and enforcement of the mandates of the court pending action by the United States Supreme Court, even though he himself had not sat on the case.[185] Justice Black vacated the stay on behalf of the Court in September.[186]

The Fifth Circuit Court declared that Meredith must be allowed to enroll in Jackson by September 25, 1962.[187] The University Board of Trustees reacted by voting to give Mississippi Governor Ross Barnett power as temporary registrar for the University.[188] Meredith was scheduled to enroll on September 20.[189] The night before his scheduled enrollment, the Mississippi Legislature passed an act that prohibited any person convicted of a crime of "moral turpitude" from enrolling in the University.[190] The morning before Meredith tried to enroll, a state court in Jackson "convicted Meredith *in absentia* on a trumped-up charge" that he had fraudulently registered to vote in Hinds County.[191] The Fifth Circuit once again fought back by blocking Meredith's arrest and enjoining the enforcement of the new act.[192] When Meredith attempted to enroll, Barnett summarily refused to allow Meredith to enroll.[193]

The Fifth Circuit fought back and Chief Judge Elbert Tuttle demanded that "the time has come" for the thirteen members of the Board to show cause why they should not be held in contempt for refusing to enroll Meredith.[194] Governor Barnett countered the demand by declaring state officials immune from arrest by federal officials and warned that any federal official trying to do so would be "summarily arrested."[195] The Fifth Circuit once again took action and issued a

182. *Id.* at 352.
183. *Id.* at 353.
184. *Id.*
185. BASS, *supra* note 179, at 179.
186. Meredith v. Fair, 83 S. Ct. 10 (1962).
187. *College Board Bows to Court Pressure*, CLARION LEDGER, Sept. 25, 1962, at 1.
188. BASS, *supra* note 179, at 184.
189. BASS, *supra* note 179, at 183.
190. BASS, *supra* note 179, at 184.
191. BASS, *supra* note 179, at 184.
192. BASS, *supra* note 179, at 184.
193. BASS, *supra* note 179, at 184.
194. *Tuttle Says Clear Case of Contempt*, JACKSON DAILY NEWS, Sept. 24, 1962, at 1.
195. *Governor Declares Officials Immune*, JACKSON DAILY NEWS, Sept. 24, 1962, at 1.

temporary restraining order against any interference with Meredith's enrollment.[196]

The following day, Governor Barnett met Meredith in Jackson and "stood solidly in the doorway and in a strong and solemn voice refused—for the second time—to admit Negro James H. Meredith to the University of Mississippi."[197] Ross Barnett "strode through the massive first floor doors exactly five hours later to a tumultuous crowd hailing him as Mississippi's number one hero."[198] The following day, Lieutenant Governor Paul Johnson met Meredith at the Ole Miss campus in Oxford and again refused to enroll Meredith, stating that he would prevent enrollment with all of his resources.[199] Those resources included twenty-two highway patrolmen who physically blocked United States Attorneys from helping Meredith enroll.[200] The Fifth Circuit promptly found Barnett and Johnson in contempt of its orders.[201]

At the contempt hearing, Tuttle informed United States Assistant Attorney General Burke Marshall that the court had virtually exhausted its powers to enroll Meredith.[202] Marshall informed Judge Tuttle that the Executive Department would try to give Mississippi every opportunity to enroll Meredith, but that there would be "no question that the order" of the court would be enforced.[203]

Barnett was informed on September 30 that President Kennedy was federalizing the National Guard and planned to go on television about a broken agreement to secretly enroll Meredith between him and Barnett.[204] Barnett, apparently not wanting Mississippians to know that he had broken an agreement with the President, suggested that Meredith be moved to the Oxford campus that day.[205] Federal marshals moved onto campus that afternoon.[206] That night, a riot erupted and the marshals were attacked.[207] Rioters threw bricks, stones, bottles and gasoline bombs. They also used clubs and firearms against the marshals.[208] Tear gas was fired into the crowd, a number of highway patrolmen were gassed, 375 persons were injured (29 of them by gunshot wounds), and 2 people were killed.[209] The following morning, Meredith registered as the first black American to attend the University of Mississippi.[210] Federal marshals immediately escorted him to

196. WOODWARD, *supra* note 122, at 186.
197. William Peart, *Drama Grips 10th Floor*, JACKSON DAILY NEWS, Sept. 26, 1962, at 11.
198. *Id.*
199. Daniel T. Anderson, *Eyewitness Tells of Meredith Visit*, JACKSON DAILY NEWS, Sept. 27, 1962, at A6.
200. *Id.*
201. *Gov. Johnson in Contempt*, JACKSON DAILY NEWS, Sept. 30, 1962, at A1.
202. BASS, *supra* note 179, at 188.
203. BASS, *supra* note 179, at 188-89.
204. BASS, *supra* note 179, at 189.
205. BASS, *supra* note 179, at 189.
206. BASS, *supra* note 179, at 189.
207. BASS, *supra* note 179, at 188-89; *Meredith Beginning Third Week*, JACKSON DAILY NEWS, Oct. 15, 1962, at 1.
208. WOODWARD, *supra* note 122, at 175.
209. WOODWARD, *supra* note 122, at 175.
210. BASS, *supra* note 179, at 191.

class.[211] Federal troops were retained in Oxford throughout the school year to maintain order on the campus.[212] In August of 1963, Meredith was awarded a diploma.[213]

That same year, the state of Alabama faced a similar crisis when two black students wanted to enroll at the University of Alabama.[214] In reaction, Alabama Governor George C. Wallace, in Ross Barnett style, warned the courts that he would never allow the University to integrate.[215] However, when President Kennedy federalized the Alabama National Guard, Wallace acquiesced and allowed the students to enroll without further action.[216] In Birmingham, black demonstrators were attacked by police dogs and knocked down by fire hoses.[217] Pictures of the riot were circulated worldwide and brought global attention to the plight of black Americans in the South.

C. Mississippi Continues to Keep its Schools Segregated

By this time, the Fifth Circuit Court realized that delay tactics were being used as a weapon to combat desegregation.[218] In 1966, the court handed down *United States v. Jefferson County Board of Education*.[219] In that case the court held that "all deliberate speed" was not fast enough. The court developed a model desegregation plan based on Federal Department of Health, Education, and Welfare guidelines.[220] In the plan, the court called for the withholding of federal funds from schools not complying with the desegregation orders.[221] The case also led to the practice of busing and the United States Supreme Court holding in *Green v. New Kent County School Board*.[222] In 1971, the United States Supreme Court upheld the practice of busing as a legitimate instrument in combating segregation in the case of *Swann v. Charlotte-Mecklenburg Board of Education*.[223]

Unfortunately, the state of Mississippi still refused to desegregate many of its public schools. Cases were filed against the state in numerous counties, Rankin County included. This Article will use for an example a case filed in 1967 by a black student against Rankin County which was still operating a dual school system.[224] Rankin County was also still engaged in the practice of limiting employment of black teachers to black schools. This case was selected because of the

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211. W.C. Shoemaker, *Negro Enrolled, Walker Jailed As Troops Suppress Rioting*, JACKSON DAILY NEWS, Oct. 1, 1962, at 1.
212. HARVEY, *supra* note 60, at 41.
213. Saul Pett, *Relatives, Marshals Watch as Meredith Gets Diploma*, JACKSON DAILY NEWS, Aug. 19, 1963, at 3.
214. HARVEY, *supra* note 60, at 41.
215. WOODWARD, *supra* note 122, at 177-78.
216. WOODWARD, *supra* note 122, at 176-78.
217. WOODWARD, *supra* note 122, at 177-78.
218. BASS, *supra* note 179, at 213; Comment, *Judicial Performance in the Fifth Circuit*, 73 YALE L.J. 90 (1963).
219. 372 F.2d 836 (5th Cir. 1966).
220. *Id.* at 845, 847-48.
221. *Id.* at 848.
222. 391 U.S. 430 (1968).
223. 402 U.S. 1 (1971).
224. Adams v. Rankin County Bd. of Educ., No. 4156, filed Aug. 1, 1967, in U.S. Dist. Ct., Southern District of Miss.

author's personal experience as counsel for the Rankin County School Board during ongoing litigation in this case.

In 1970, the Fifth Circuit Court of Appeals mandated to the state of Mississippi that a unitary school system be established and maintained. The court also ordered that a plan of desegregation be drafted for approval by the Federal District Courts in Mississippi which would, in effect, establish the practice of busing students from previously all black schools to all white schools and vice-versa. Construction and implementation of the plan were to be done in a manner conforming to constitutional standards and *Jefferson*. Black principals, teachers, teacher's aids and other staff were to be accorded the same rights as their white counterparts. Indeed, a nondiscrimination policy was to be adopted in connection therewith for the employment practices in the county and the state as a whole.

The United States District Court retained jurisdiction of the case to ensure that the plan it approved would be followed. From time to time, the court made necessary alterations to the plan in order to carry out the ultimate goal of desegregation. Basically the plan provided for "zone boundaries" within which students, both black and white, were bussed to ensure a balanced ratio of black to white students. The order became a blanket order affecting other school districts in Mississippi which were similarly situated. The plan, although altered and amended several times over the years, was effective in Rankin County until 1994. The plan then became unnecessary due to the establishment of a permanent black-to-white ratio in the school system by population expansion. Currently, there are no segregated public schools in Rankin County. However, this case is still in litigation before the district courts.

V. CONCLUSION

This Article seeks primarily to give an interesting account of the struggle to integrate the South and the role of the Fifth Circuit in the integration movement. The action taken by the Fifth Circuit Court of Appeals and the United States of America on behalf of black Americans made the school system in Mississippi and other states better for all races. Good things do grow from bad things, contrary to the thinking of some who would disagree with such a philosophy. Ultimately, the Rankin County Schools, as well as other state schools, were able to improve the quality of education through the unitary school system.

In the beginning of the civil rights movement, no person could have imagined the horrors of the events occurring in the South. No one could have been prepared to deal with the consequences. In the opinion of this writer, it is ironic that the remedies to segregation included bussing, a practice that led to pupil placement in specific schools on the basis of his or her race. However, the practice did work to reach the goal of integration.

If this author had to criticize any particular aspect of the Fifth Circuit's actions during the integration suits, it would be the amount of time it took before the court realized that delay was not only a weapon used to fight segregation, but a tool used by some to plan violent attacks on blacks who were trying to integrate

the system. However, it is easy to make such criticism in hindsight. It is much harder to criticize the court in light of the fact that many others would not have stood up to the masses and ruled again and again to end desegregation.

A NOTE OF THANKS: I would be remiss if I failed to mention some of the players on both sides of the Rankin County case who are still around. William Allain, who was the Assistant Attorney General and in charge of school desegregation in Mississippi, not only gave valuable assistance to local school board attorneys, but was an excellent liaison among all parties and the courts. The Honorable Fred L. Banks, Jr.,[225] currently a Mississippi Supreme Court Justice, and his former law partner, the Honorable Ruben Anderson, a retired Mississippi Supreme Court Justice, both represented the plaintiffs in the Rankin County case together with the Honorable R. Jess Brown, now deceased, but highly respected for his civil rights legal talents. James W. Smith, Jr., who serves as an associate justice with Justice Banks on the Mississippi Supreme Court, represented the defendants during some period of the last twenty-nine years.

Additionally, both writers would like to thank Anupama Agarwal, law clerk for the Mississippi Court of Appeals, for her help with much of the research in this Article and her supplementary contributions to caseload research during the time that it took the writers to finish this Article.

> [O]ur land is now, more than ever, the last best hope on earth. I know that we can—I know that we shall—begin here the fuller and richer realization of that hope—that promise of a land where all men are free and equal, and each man uses his freedom wisely and well. Hubert H. Humphrey, in his speech at the 1948 Democratic National Convention.[226]

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225. *See* Fred L. Banks, *The United States Court of Appeals for the Fifth Circuit: A Personal Perspective*, 16 MISS. C. L. REV. 275 (1996).

226. IANNIELLO, *supra* note 17, at 33.